CHOATE'S FINAL ARGUMENT.

THE NEW-YORK LAWYER CLOSES THE CASE AGAINST THE INCOME TAX.

HE HOLDS THAT A TAX ON RENTALS IS A TAX ON LAND AND THEREFORE A DIRECT TAX—CARE TAKEN BY THE CONSTITUTION-MAKERS—THE COURTROOM CROWDED BY INTERESTED AUDITORS.

Washington, March 13.—The argument in the income tax cases, which has been in progress before the Supreme Court of the United States since last Thursday, was closed to-day in a speech of three hours, delivered by Joseph H. Choate, of New-York, in support of the contention that the provisions of the law are unconstitutional.

The interest in the argument has grown day by day, as manifested by the extent and eagerness of the throngs that have gathered, and it reached a climax to-day with the close of the argument. Long before the hour of opening the court the corridors leading to the chamber were filled with crowds anxious to gain admittance, but not half of them reached the desired goal. When Mr. Choate began, at 12 o'clock, the continuation of his remarks begun yesterday afternoon, he spoke in the presence of an audience that would have been a compliment to any orator in the land. Besides the counsel engaged in the case, and the members of Congress who had previously been in attendance upon the argument, there were present ex-Speaker Reed, who sat beside Mr. Springer; Representative Cousins, of Iowa; Senator Mitchell, of Oregon; Senator Cullom, of Illinois; Señor Gana, Chilian Minister, and Anibal Cruz, his Secretary of Legation, and a large number of ladies.

There was no delay from preliminary proceedings, and as soon as the court was declared open Mr. Choate began his speech. He said that when he closed yesterday he was pointing out the ample means of indirect taxes open to the Government to be applied under the rule of apportionment in equality and uniformity, without resorting to direct taxes, and yet, that under that system of taxes, as a last resort, the entire property of the people of the United States was open to Congress for the welfare and defence of the Government. He called attention to the distribution of the power of taxation and the limitations of the exercise of that power, from the operation of which it could not, by any device, escape. Mr. Choate said he did not impute to constitutional convention such heedlessness or ignorance as was suggested in one of the briefs on the other side; that it did not believe and understand that it covered the whole subject of taxation by its declarations with respect of direct taxes, imports, excises and duties.

Coming to the argument of the propositions he had advanced, Mr. Choate asked: "How about the corpus of personal property?" If a tax upon it was neither a direct tax nor an import, or excise or a duty, what would follow? Just that which Chief Justice Chase said would apply 100 years ago—that it was a tax to be enforced by Congress and laid neither according to apportionment nor of equality and uniformity. And yet in all that 100 years nobody had even suggested that such a tax could be so enforced and collected.

The true rule of construction, Mr. Choate said, was to impute to the work of the Constitutional Convention the same interpretation that everybody else gave to it at the time and had ever since given it. Mr. Wadleigh, of New-Hampshire, had the true idea when he said, discussing the operation of the taxing clause, that it would bear hardly upon his State, but that New-Hampshire would consent to it in order to have the Constitution adopted. Why should it bear hardly upon New-Hampshire, with its mountains and rocky hillsides, were it not that all taxes, except duties, imports and excises, should be apportioned according to population?

Mr. Choate asserted that the tax upon real estate, the rents and incomes therefrom, was a direct tax, and that the members of the Constitutional Convention had them in mind as a subject of direct tax when they used that term. He took that, he said, not from anything that had been said by Justice Patterson or anybody else in an effort to limit or prescribe the meaning of the Constitution, but from the generally and universally acknowledged consent of mankind then and now. There had been three periods of direct taxation—in 1792, when trouble with France was apprehended; during the War of 1812, and in the War of the Rebellion. The first was emblematic of them all—it was a direct tax upon real estate, not naked land, as Mr. Carter had contended, but upon houses and lands, productive and unproductive alike.

The second proposition which Mr. Choate advanced was that a tax upon rents from real estate was indistinguishable from a tax on the real property itself. He had understood the learned Attorney-General yesterday to say no; that rent, after it got into a man's pocket, was money, and that it was that which was taxed. The law proposed to tax rents as personal property and not as real estate. But how could any one pay the tax upon land—Mr. Choate put the question, he said, as applied to the practical, ordinary business affairs of life, of which the Court was bound to take knowledge—except as he paid it from the rentals? The owner could not take a piece of the land and give it to the Government as an equivalent for the tax. "Is there any difference, then," he asked, "between a tax on land and a tax on the rents therefrom?" An unapportioned tax upon real estate, Mr. Choate said, the Constitution forbade; could such a tax be laid upon the rents of income thereof? No one would say that such a law could be maintained. A tax upon land being forbidden, Congress could not wipe out the value of the land by a tax upon the income therefrom for a period of years. "We have been lawyers all our lives," said Mr. Choate, "and have followed scores of generations in considering the difference between land and the rent or profit thereon. We have found it to be an intangible and insensible thing."

Illustrating this, he quoted Coke upon Littleton, which, he said, had been the law in all English Christendom ever since, that when a land-owner grants the profits of his lands to another the fee to the land itself passes, for what is land but the profit thereon? The Attorney-General had said that the law taxed rents as personal property and not as rents. If that were so, it would still need to be apportioned among the States according to population to be effective; but the law assessed a tax on rents as such and not as personal property. He quoted numerous decisions by the Supreme Court of the United States itself, that a tax upon the profits arising from a certain business or thing was a tax upon the business or thing itself. Therefore, he said, he submitted the proposition, although with diffidence, because it had been so stoutly contested by his learned adversaries, that a tax upon rents is a tax upon land, and required by the same law and the same Constitution to be apportioned among the States according to population to be effective. And so as to personal property, Mr. Choate contended that a tax upon it was included within the term of direct taxes, and valid only when apportioned among the States.

"Suppose a man," said Mr. Choate, "assessed on his personal property under a tax apportioned among the States, should refuse to pay on the ground that it was an excise tax, a duty, and appealed to the courts for relief. Would any court grant it? Not at all."

The tax on interest of United States bonds, Mr. Choate said, was a tax on the bond itself, as in the case of rents, and therefore could not be legally collected. The interest on a bond issued by the United States or any other body politic, he said, was a part of the bond itself and inseparable from it. "What value to me," he asked, "is a bond of the United States payable thirty years hence, but for the fact that in the mean time it promises to pay me interest semi-annually at the rate of 3 per cent?"

Concluding this part of the argument Mr. Choate insisted that he had established beyond controversy the proposition that a tax on rents is a tax on land, and therefore a direct tax. "The other side had our briefs two weeks, and the only answer or suggestion they have been able to make is that of the Attorney-General that the law taxes rents as money in a man's pockets and not as rents."

Mr. Choate sketched in a most interesting and instructive way the compromise made in the Constitutional Convention relating to the matter of taxation, by which the States surrendered to the United States the sole right to levy excises, duties and imposts, and to control and regulate commerce between the States, and the right to levy a direct tax upon the real and personal property in the States, as an ultimate source of revenue for the maintenance of the Government itself. It was by that bargain that the adoption of the Constitution was bought, and the question now was, said Mr. Choate, whether that bargain should be repudiated and the seaboard States should take back the price paid for it.

Representation and direct taxation went hand in hand, said Mr. Choate. It was the only thing that the framers of the Constitution said twice in that instrument. What was the reason? It was that those men were fresh from the conflict over the injustice of taxation without representation and they proposed to prevent, as far as they could, the possibility of such an event as is proposed in the present law, that the representatives of a large proportion of the population should vote to compel the constituents of the smaller proportion of population to pay more than their just part of the taxes.

Coming to the effect of the decisions by the Court upon the propositions laid down by him, Mr. Choate asserted that the question involved that rents are inseparable from real estate had never been decided by the Court; it had never been considered nor even presented for consideration. "Our adversaries," he continued, "say there is no question here; that we have lost the case in advance under the decisions of the Court. Well, let's see." He then reviewed the issues presented in the several cases referred to, ending with the Springer case. "In that case," said Mr. Choate, "Mr. Springer sued for the recovery of a year's income tax when he was a representative of the outside world, not a Representative in Congress, as he has been since, and he averred that he had earned $50,000 that year. He was a lawyer, and he advocated his own cause. Probably he was an exception to the rule, which usually obtains in those cases."

There was nothing in the pleadings in that case, nor in the decision, said Mr. Choate, which precluded an affirmance of the proposition for which he contended. Mr. Choate then proceeded to give the Court, at considerable length, his definition of the uniform clause in the Constitution. Mr. Carter, he said, had explained that it meant that the tax should extend throughout the United States, and related to the plan and method of collecting the tax. Counsel felt constrained to concede something to the phrase, but the Attorney-General in himself representing the august power of the legal branch of the Government, uses the sponge, and, sweeping his arm across the face of the instrument, calmly expunges the word as "mere surplusage." The meaning of the word, Mr. Choate said, was that in the levying of imposts, duties and excises, whenever done, there should be equal and exact relations between the Government and each and every citizen throughout the United States. The rule was introduced to put an end to the previously existing rule of inequality. This construction of the phrase, said Mr. Choate, had been uniformly acted upon by the Government ever since its beginning. "I call Your Honor's attention," he said, "to the fact that there was never a tariff act passed by the United States which made the rate of duty depend upon the person or corporation which paid it."

Justice White—Mr. Choate, would not that construction destroy all specific duties provided in every tariff act?

Mr. Choate—We do not claim such a right. We do not say that every like article shall pay the same rate of duty, or that every article of a special class shall pay the same rate.

Justice White—Do not all the decisions of State courts upon the term "equal and uniform" establish the fact that you cannot tax a man with $1 worth of property at the same rate you do one with $10?

Mr. Choate—I think not.

Not a single decision had been found in either the Federal or State books, said Mr. Choate, that varied from the meaning of the word contended for by himself and associate counsel—that the tax shall be equal as between man and man.

This brought him, said Mr. Choate, to the startling and monstrous doctrine propounded by the representatives of the Government that the inequalities, or supposed inequalities of a tariff bill could be compensated for by irregularities in another form of taxation. "Is this court ready to go to that length?" he asked. Before leaving this branch of the case, Mr. Choate said there was an unvarying line of decisions by State courts confirming the proposition contended for by him. And it was illustrated and strengthened by the exception quoted from Louisiana.

Mr. Choate proceeded then to discuss the illegal exceptions made by the bill, the first and chief of which was the exemption of incomes of $4,000 and less. The meaning and import of the law, he asserted, was to punish the rich for being in that condition. Counsel who had preceded him advocated the law for the reason that it affected the rich men only, the extremely rich. "I thought there was one law for the rich and for the poor. Oh, we are at the parting of the ways, Your Honors." The bill, he declared, was a deliberate strike by those who voted for it at those parts of the United States where money has accumulated. That exception of $4,000 was the same as other blows at the Constitution within the four corners of the document. "No wonder," he said, "that the President refused to sign the bill; no wonder that neither the President nor Secretary of the Treasury recommended the adoption of the income tax."

Justice Harlan—Do you concede that any exception may be made?

Mr. Choate—We do not.

While discussing the inequalities of exemption accorded to individuals and to corporations, Justice Brown suggested: "May it not have been that the exception of $4,000 to the individual was allowed as a reasonable amount for domestic and household expenditures, while the corporation is not compelled to spend anything for those purposes?"

Mr. Choate—My impression, Your Honor, is that the law is made alike for the corporation and individual. The discrimination against corporations is but a punishment for their having engaged in that form of business which their States had held out to them as a proper and desirable method.

Referring to the exceptions made in behalf of religious, charitable and educational institutions, Mr. Choate described them as "deliberate, arbitrary, capricious secretion of the accumulations of great corporations from the operations of the law, without justification, upon any principle of law or of public policy." Mr. Choate said that Trinity Church Corporation, with its hundreds of acres of stores and houses, he was going to say—

Chief Justice Fuller—Is Trinity Church exempt?

Mr. Choate—It is, but it never was before. Columbia, Yale, Harvard colleges with their immense accumulations were to go free, while Idaho, Dakota and other Western States pay to make up the deficit thus occasioned. "But let that go; be generous before you are just." Regarding the effect of the exception of mutual insurance companies and banks and savings banks, Mr. Choate said that the provisions regarding savings banks would enable any man with ten millions or a hundred millions to put them into a savings bank and thus escape taxation. The amount of accumulations by mutual insurance companies relieved from taxation by the exception in their favor, Mr. Choate said, was fully $1,200,000,000. Was that a reasonable exercise of Congressional policy, or was it caprice? The exception, said Mr. Choate, was not suggested by the author of the bill, nor was it in the bill as it left the House. By some means it was smuggled in while the bill was in possession of a Senate committee. How did it get there?

Mr. Choate said his learned friend (Mr. Carter) had argued that these mutual companies were organized to divide the losses of insurance among the members, and for nothing else. "My friend," he continued, "has been the legal adviser of the Atlantic Mutual Insurance Company for forty years. He has seen business grow until the accumulations amount to $14,000,000. He has seen it issue reports year after year giving the result of the investment of those accumulations, and I imagine that his friend, the venerable president of the company, would laugh in his face if he should go to him and say: 'Mr. Jones, this is all wrong; you are in business solely for the purpose of dividing losses among your members.'"

Whatever its effect upon Mr. Jones might be, the suggestion was too much for the gravity of those who heard it, and court and spectators joined in as hearty a laugh as is consistent with the traditions of the court. Another slight ebullition of laughter was created a moment later. Mr. Choate enumerated the Equitable Assurance Company as one whose $185,000,000 of surplus would escape taxation.

"Is the Equitable a mutal company?" asked Justice Harlan with some surprise.

"Well," answered Mr. Choate, with a slight suspicion of a chuckle in his tones, "it has a capital stock of $100,000, but transacts business on the mutual plan."

The last point presented by Mr. Choate was that State and municipal bonds were entitled to exemption from the operation of the law, upon the same theory that National bonds were exempt from State taxation. Mr. Carter had argued that the power to borrow money, which would be impaired if its bonds were subject to unlimited taxation by the State, was necessary to the sovereignty of the State, but that it was not essential to the existence of the States. Mr. Choate held that it was as necessary an ingredient in the sovereignty of the States as it was of the Nation, and instanced the fact that the city of New-York is arranging to borrow $50,000,000 with which to provide rapid transit for its inhabitants. The contention that the Federal Government should have the same power to tax the bonds of the States as they have to tax the bonds of each other, Mr. Choate said, was met by the statement that the States had entered into no such agreement with each other, as they had with the Federal Government.

After apologizing to the Court for having trespassed upon their time and attention until, possibly, he had wearied them, Mr. Choate said in closing:

"I have felt the responsibility of this case as I have never felt one before, and never expect to again. I do not believe any member of this court has ever sat, or ever will sit, to hear and decide a case the consequences of which will be so far reaching as the present one; not even the venerable member of the court (Mr. Field) who survives from the early days of the Civil War and has sat upon every question of reconstruction, of National destiny, of State destiny, that has come up in this court during the last thirty years. No member of the court will live long enough to hear a case involving a question more vital than this, which affects so seriously the people of these United States, who rely upon the guarantees of the Constitution which our fathers made and under which our people have lived until this time.

"If it is true, as my learned friend (Mr. Carter) said in closing, that the passions of the people are aroused on this subject; if it is true that a mighty army of 70,000,000 citizens is likely to march this way to see about the decision in the pending case, it is all the more vital and important to the future welfare of this country that the court should now determine in the first place whether it has the power, and then, if it has the power, to proceed to execute it in order to put a stop to such legislation as that in controversy here."

Mr. Choate spoke for three hours, holding the attention of the large throng with unabated interest to the close.

Public Notice

PUBLIC NOTICE.

OFFICE OF THE CLERK OF THE COMMON COUNCIL, ROOM NO. 8, CITY HALL, NEW-YORK CITY.

New-York, March 8, 1895.

Pursuant to directions given to me in the following resolution, which was adopted by the Common Council February 26th, and approved by the Mayor, March 4th, 1895, viz.:

RESOLVED, That Thursday, the eleventh day of April, 1895, at one o'clock in the afternoon, and the Chamber of the Board of Aldermen, be and they are hereby designated as the time and place when and where the application of the People's Traction Company to the Common Council of the City of New-York for its consent and [illegible]

THE PEOPLE'S TRACTION COMPANY OF THE CITY OF NEW-YORK, By FRANKLIN A. WILCOX, President.

[illegible]

FRANKLIN A. WILCOX.

[illegible]

WM. H. TEN EYCK, Clerk of the Common Council.

REAL ESTATE.

BUSINESS AT THE EXCHANGES.

In comparison with Tuesday, the auction-rooms were deserted yesterday. Only one parcel was offered at the Broadway Salesrooms, and that was under foreclosure proceedings. Owing to the absence of William Kennelly, the auctioneer, Philip A. Smith occupied his stand and sold, on one bid of $20,000, No. 40 West One-hundred-and-thirty-fifth-st., a five-story stonefront flat, with lot 25x99.11, to the plaintiff, the American Savings Bank.

James R. Hayden has sold his four-story brownstone dwelling, 25x100, No. 10 West Fifty-third-st.

Wilmerding & Field have sold the three-story brick dwelling, 15x98.9, No. 26 West Thirty-sixth-st., for Colonel J. H. Gray to Henry S. Wilson, for about $33,000.

Charles E. Runk has sold to B. Maguire, six lots on One-hundred-and-thirty-eighth-st., between Eighth and Edgecombe aves., for $34,500. The lots will be immediately improved by the erection of private dwellings.

The estate of James W. Mitchell has sold No. 239 to 243 West Fifteenth-st., old buildings, on a plot 72x103.3 feet, for about $50,000. James Blucker & Sons are mentioned as the brokers in the sale, and Joseph L. Buttenweiser as the purchaser.

Hellner & Wolf have sold to Dr. Swinburne No. 123 West One-hundred-and-twenty-first-st., a three-story dwelling on lot 20x100 feet.

Stephen Lovejoy has sold to Builder Charles Kernan the lot, 25x100 feet, at the southeast corner of Fifth-ave. and One-hundred-and-twentieth-st. A five-story house will be erected by the purchaser.

L. and S. Sachs are the purchasers of No. 24 West Twenty-second-st., the sale of which for $53,000 was reported last week.

The Tilden partition suit will be carried, it is said, to a conclusion, J. Warren Green having been appointed referee Tuesday last. He will sell the Tilden realty, including "Greystone" and the Gramercy Park property.

William Buhler has sold to Franz Merz the four-story dwelling, 20x60x100, No. 53 West Eighty-eighth-st., on private terms.

Elizabeth Euler has filed plans for the building of four five-story brick flathouses on the north side of East One-hundred-and-thirtieth-st., and 125 feet east of Amsterdam-ave., 25x70, to cost $72,000.

Alexander Moore has filed plans for the building of two five-story flathouses, 25x90, on the north side of Sixty-sixth-st., 200 feet west of Eighth-ave., to cost $30,000.

William Speir, jr., has filed plans for the building of a two-story brick dwelling and store of various dimensions on the north side of Seventy-fourth-st., between the Boulevard and Amsterdam-ave., to cost $30,000.

Charles Wirth has filed plans for the building of a five-story brick flathouse, 25x78, on the north side of One-hundred-and-thirty-fourth-st., 300 feet east of Seventh-ave., to cost $50,000.

William Drought has filed plans for the building of two five-story brick flathouses, 34x89, on the south side of Ninety-first-st., 375 feet west of Columbus-ave., to cost $70,000.

Nathan Low has filed plans for the building of two five-story brick flathouses, 25x87, on the east side of Amsterdam-ave., 26 feet north of One-hundred-and-sixty-seventh-st., to cost $36,000.

Edward H. Pierson has filed plans for the building of nine five-story brick flathouses, 25x90, on the north side of Ninety-sixth-st., 208 feet east of Third-ave., to cost $125,000.

Paul G. Decker has filed plans for the building of a four-story brick tenement, 25x75, on the east side of Third-ave., to cost $10,000.

John D. Taylor has filed plans for the building of three five-story brick flathouses of various dimensions on the northwest corner of the Boulevard and One-hundred-and-fourth-st., to cost $130,000.

John P. Duncan has filed plans for the building of a five-story brick store building at No. 12 East Eighteenth-st., to cost $5,000.

Louis E. Todd has filed plans for alterations in two nine-story brick buildings used for hotel purposes, of various dimensions, on the southeast corner of Broadway and Forty-first-st., to cost $5,000.

Michael Brennan has filed plans for alterations to three ten-story brick buildings of various dimensions, used for hotel purposes, on the southwest corner of Central Park West and Seventy-fifth-st., to cost $8,000.

REAL ESTATE TRANSFERS.

85th-st., No. 118 West; Arturo Cuvas to Robert A. C. Smith ... $23,500

85th-st., s s, 268.4 ft w of West End-ave., 16.8x102.2; Henry E. Floyd to Alice C. Floyd ... 1

[illegible]

RECORDED MORTGAGES.

[illegible]

Fellows, 1st-st., w s, lots 19 and 20, map Prospect Hill, 3 years ... 2,000

Sattenstein, Betsey, and another to Sarah Dinkelman, s w corner Delancey and Pitt sts, installments ... 4,400

Tinken, Mary A., to Rose F. Livingston, s s, 52d-st, 275 ft w of 9th-ave, demand ... 700

Van Rensselaer, Olivia P. A., and another to the Germania Life Insurance Company, s w corner West End-ave and 85th-st, 3 years ... 22,000

Vossler, Daniel, jr., to Murray Hill Bank, s s 130th-st, 160 ft e of 5th-ave, 1 year ... 100,000

Williams, Mary B., to Timothy R. Green, n s 88th-st, 66.8 ft w of West End-ave, demand ... 2,000

Weed, Joseph E., to the Union Theological Seminary, City New-York, s s 78th-st, 68 ft e of West End-ave, 3 years ... 20,000

Whelan, William, and wife to the Emigrant Industrial Savings Bank, w s 1st-ave, 130.8 ft s of 88th-st, 1 year ... 500

Williams, Mary B., to F. B. Lord, as executor, n s 88th-st, 66.8 ft w of West End-ave, 5 years ... 18,000

Lost and Found.

BANKBOOK LOST.—Bankbook No. 757,215 of the Bowery Savings Bank is missing. The finder is requested to return it to the bank. If not restored before the 7th day of April, 1895, application will be made to the bank for a new book.

LOST.—Bankbook No. 261,260 on Dry Dock Savings Bank. Any person having claims upon said book is called upon to present the same to the bank within thirty days, or the said book will be declared cancelled and extinguished and a new one issued in lieu thereof.